

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest)	MEMORANDUM DECISION
of M.B., a person under)	(Not For Official Publication)
eighteen years of age.)	
_____)	Case No. 20050764-CA
)	
K.B.,)	F I L E D
)	(December 8, 2005)
Appellant,)	
)	2005 UT App 532
v.)	
)	
State of Utah,)	
)	
Appellee.)	

Third District Juvenile, Tooele Department, 148955
The Honorable Dane Nolan

Attorneys: David J. Angerhofer, Sandy, for Appellant
Mark L. Shurtleff and John M. Peterson, Salt Lake
City, for Appellee
Martha Pierce and Jim Michie, Salt Lake City,
Guardians Ad Litem

Before Judges Bench, Greenwood, and McHugh.

PER CURIAM:

K.B. (Father) appeals the termination of his parental rights in M.B.¹ Father challenges the sufficiency of the evidence supporting the juvenile court's findings.

In reviewing an order terminating parental rights, this court "will not disturb the juvenile court's findings and

¹In Case No. 20050752-CA the mother of M.B. appeals the termination of her parental rights in M.B. and A.M. Father acknowledges that he is not the father of A.M., nor has he adopted her or taken any action that would provide him with parental rights over A.M. Accordingly, his appeal involves only M.B.

conclusions unless the evidence clearly preponderates against the findings as made or the court has abused its discretion." In re R.A.J., 1999 UT App 329, ¶6, 991 P.2d 1118 (quotations and citation omitted). A juvenile court's findings of fact will not be overturned unless they are clearly erroneous. See In re E.R., 2001 UT App 66, ¶11, 21 P.3d 680. A finding of fact is clearly erroneous only when, in light of the evidence supporting the finding, it is against the clear weight of the evidence. See id. Further, we give the juvenile court a "'wide latitude of discretion as to the judgments arrived at' based upon not only the court's opportunity to judge credibility firsthand, but also based on the juvenile court judges' 'special training, experience and interest in this field.'" Id. (citation omitted).

Father argues that there was insubstantial evidence to substantiate the juvenile court's findings that: (1) Father neglected or abused the children, pursuant to Utah Code section 78-3a-407(1)(b); (2) Father is an unfit or incompetent parent, pursuant to Utah Code section 78-3a-407(1)(c); (3) Father is unable or unwilling to remedy the circumstances that caused the child to be in an out-of-home placement and will not be capable of exercising proper and effective parental care in the near future, pursuant to Utah Code section 78-3a-407(1)(d); (4) there has been a failure of parental adjustment because Father is either unable or unwilling to substantially correct the conditions that led to the placement of the child outside his home, pursuant to Utah Code section 78-3a-407(1)(e); and (5) Father made only token efforts to avoid being an unfit parent pursuant to Utah Code section 78-3a-407(1)(f)(iv). Under Utah Code section 78-3a-407(1), the finding of any single ground is sufficient to warrant termination of parental rights. See Utah Code Ann. § 78-3a-407(1) (Supp. 2005) (providing that the court may terminate all parental rights if it finds any one of grounds listed); see also In re F.C. III, 2003 UT App 397, ¶6, 81 P.3d 790 (noting that any single ground is sufficient to terminate parental rights). Accordingly, if any of the grounds found by the juvenile court to terminate Father's parental rights are supported by the record, such ground is sufficient to warrant termination of Father's parental rights.

First, the record supports the juvenile court's findings of abuse, neglect, and unfitness. It is undisputed that Father has a drug problem and had methamphetamine and marijuana in his system at the time M.B.'s siblings were removed from his home. At the time, the mother was also five months pregnant with M.B. The State presented evidence through A.M.'s case worker and therapist (A.M. is Father's step-daughter) that A.M. recounted episodes of physical abuse and domestic violence at home. A.M.

told them that Father had hit her, that she was very afraid of Father, and that she did not want to live in the family's home if Father was there. Further, she recounted several episodes of sexual abuse at the hand of her older brother and indicated that her mother knew of the activity. Father and A.M.'s mother refuted this testimony; however, the juvenile court found the description of abuse credible and rejected all testimony denying the abuse. A.M. also told these same individuals that she witnessed Father and her mother using drugs; she knew exactly where those drugs were stored; and she could identify other persons in town who regularly used drugs with Father and her mother. Accordingly, the record supports the conclusion that A.M. was an abused child and Father was unfit. See Utah Code Ann. § 78-3a-408(2) (Supp. 2005).

Based upon these findings and conclusions M.B. was also a neglected child because she was a minor "who [was] at risk of being a neglected or abused child . . . because another minor in the same home [was] a neglected or abused child." Utah Code Ann. § 78-3a-103(1)(s)(i)(E) (Supp. 2005). As such, the evidence adduced by the State demonstrating that A.M. was abused was also sufficient to demonstrate that M.B. was neglected. See In re J.B., 2002 UT App 267, ¶22, 53 P.3d 958 (concluding evidence of abuse and neglect of older siblings was sufficient to demonstrate infant was also neglected).

Because the juvenile court did not err in concluding that M.B. was a neglected or abused child and that Father was unfit, there are sufficient grounds to affirm the termination of parental rights. The record also supports the juvenile court's findings that Father was "unable or unwilling to remedy the circumstances that caused the children to be in out-of-home placements and will not be capable of exercising proper and effective parental care in the near future" as well as failure of parental adjustment for the same reasons. While Father did undergo drug treatment therapy and other education programs while in prison, there is no evidence to demonstrate that he continued with such therapy and education programs once he was released from the State's custody. Similarly, there is no competent evidence to demonstrate that Father has stopped using drugs. Further, after being released from prison, both Father and his wife lived in the homes of persons with whom they associated while using drugs prior to the removal of the children. Finally, A.M. testified that not only did Father hit her, but there was a lot of hitting in the home. There are no facts in the record that demonstrate that Father has taken steps to resolve his anger and domestic violence issues. These facts demonstrate that

Father was simply unable or unwilling to remedy the circumstances that led to the children being removed in the first instance.²

Thus, the evidence was sufficient to support the termination of Father's parental rights. The juvenile court's findings of fact were not clearly erroneous. Further, the findings supported the juvenile court's conclusions and its determination that grounds for termination of Father's parental rights were established.³

Accordingly, the order terminating Father's parental rights is affirmed.

Russell W. Bench,
Associate Presiding Judge

Pamela T. Greenwood, Judge

Carolyn B. McHugh, Judge

²Because numerous other grounds support the termination of parental rights there is no need to analyze the final ground for terminating Father's parental rights in M.B., i.e., making only token efforts to avoid being an unfit parent.

³Father does not contest the finding that it is in the best interest of M.B. to have his parental rights terminated. See In re J.B., 2002 UT App 267, ¶22, 53 P.3d 958 (stating that before parental rights can be terminated there must be a showing that parent is below some minimum level of fitness and it is in the best interests of the child to terminate the parent's parental rights).